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92-543 Kokole PL
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JUL 21 2008

In re Application of
Thomas C. Thompson
Application No. 09/690,657
Filed: March 2, 2001
Attorney Docket No.

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ON PETITION

This is a decision on the third renewed petition to withdraw the holding of abandonment, filed March 13, 2008.

The third renewed petition is **DISMISSED**.

The application became abandoned on September 12, 2003, after no response was received to the Notice of Non-Compliant Amendment mailed August 11, 2003, which set a shortened period for reply of one-months from its mailing date. No response was received within the allowable period, and the application became abandoned on September 12, 2003. A Notice of Abandonment was mailed December 15, 2003.

In the instant petition, petitioner maintains that the Notice of Non-Compliant Amendment was never received.

When, as in this case petitioner is arguing that an Office communication was not received, petitioner must establish non-receipt of the Office communication in accordance with section 711.03(c) of the *Manual of Patent Examining Procedure* that requires the following:

[t]he showing requires to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petitioner must make a statement that petitioner's records were searched, but the Office communication was not found. Petitioner must also provide a copy of petitioner's logs showing where the Office communication would have been entered if it had been received. It is noted that in the prior-filed petitions, petitioner states that petitioner maintains an inventor's logbook where incoming correspondence is entered. The renewed petition should be accompanied by a copy of the relevant portions of the inventor's logbook. If, in fact, petitioner does not keep a log, petitioner may file a copy of the contents of the incoming correspondence petitioner has received for this application. Petitioner may also file a copy of any calendar notations petitioner maintains relative to this patent application that may corroborate petitioner's allegation that the notice was not received. This documentation must accompany any renewed petition filed under 37 CFR 1.181(a).


It is noted that the petition was accompanied by a copy of a "Notice Regarding Drawings" mailed August 20, 2003, that was erroneously sent to petitioner. Petitioner asserts that the petitioner's receipt of this notice with the errors contained thereon is evidence that the Notice of Non-Compliant Amendment was not received. Petitioner's argument is not persuasive. Petitioner's receipt of the this "Notice Regarding Drawings" is evidence of an error on the part of the USPTO in sending the wrong notice to petitioner, but is not evidence that the Notice of Non-Compliant Amendment mailed August 11, 2003, was not received. Petitioner must file a copy of any calendar notations or logbook that petitioner maintains relative to this patent application that may corroborate petitioner's allegation that the notice was not received. Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee (\$1,540.00 for a large entity and \$770.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions